

1 -- some of whom also face asbestos findings.

2 THE COURT: I'm sorry. And your name again, please,
3 sir?

4 MR. CANSLER: My name is Jason Cansler.

5 THE COURT: I'm sorry?

6 MR. CANSLER: Jason Cansler, C-a-n-s-l-e-r.

7 THE COURT: Cansler, thank you, sir.

8 Mr. Cansler, did you know that 12 of the 29 have
9 been previously diagnosed with asbestosis?

10 MR. CANSLER: I can't speak specifically about that,
11 no, ma'am.

12 THE COURT: Why?

13 MR. CANSLER: Because I don't know if -- he's saying
14 that they currently are not being diagnosed with a mixed dust
15 pneumoconiosis. I don't know what he's trying --

16 THE COURT: Well, these are your clients.

17 MR. CANSLER: Well, I'm trying to figure out what
18 he's suggesting to this Court.

19 THE COURT: What he's telling me is that he has
20 information either from internal Defendant exhibits, their own
21 information in having defended silicosis -- asbestosis cases, or
22 from the John Manvel Trust, that 12 of your 29 have had previous
23 claims of asbestosis.

24 MR. CANSLER: Okay.

25 THE COURT: Is that what you're saying?

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1 MR. MULHOLLAND: That's correct, your Honor.

2 THE COURT: Is that on your Fact Sheets that they
3 have been previously diagnosed with asbestosis?

4 MR. CANSLER: If that was, in fact, true, I would
5 recommend to this Court that it should be on those Fact Sheets.
6 We rely on their answers to those Fact Sheets, yes, ma'am.

7 THE COURT: Have you represented anybody in
8 asbestosis claims, your firm?

9 MR. CANSLER: Yes, ma'am.

10 THE COURT: Did you represent any of these 29 in
11 your asbestosis claims?

12 MR. CANSLER: I don't know the answer to that and
13 would hate to be wrong.

14 THE COURT: Okay. I'm going to give you 30 minutes
15 to come back and give that information from someone in your
16 office that knows.

17 MR. CANSLER: Yes, ma'am.

18 Is there anything else before I?

19 MR. MULHOLLAND: No, your Honor.

20 THE COURT: Thank you.

21 MR. CANSLER: Thank you.

22 THE COURT: But we won't talk about McManus any more
23 until this gentleman returns.

24 MR. MULHOLLAND: Now your Honor the other case that
25 I think is still impacted or likely to be impacted by our order

1 25 motion, the Motion to Dismiss, is the Alexander case and the
2 real problem there comes in with this group of new medical
3 records, diagnoses --

4 THE COURT: Well, we'll get to that.

5 MR. MULHOLLAND: Excuse me?

6 THE COURT: We'll get to that in a minute.

7 MR. MULHOLLAND: Okay.

8 THE COURT: Mr. Laminack, are you ready with the --
9 have you looked at the three petitions?

10 MR. LAMINACK: We're still searching, your Honor.
11 We'll be ready before the hearing is over.

12 THE COURT: Do you want to just print them out for
13 him, Ms. Scotch?

14 CASE MANAGER: Yes, your Honor.

15 THE COURT: And what Mr. Laminack in Alexander you
16 just filed -- let's just take up the last of it. You just filed
17 the expert designations several months after the due date.

18 Did you know that?

19 MR. LAMINACK: I know that the due date fell during
20 a period in which you had stayed the proceedings.

21 THE COURT: No. I didn't stay the proceedings
22 during that time.

23 MR. LAMINACK: My understanding is your Honor stayed
24 -- issued a stay order in February and lifted it June 30th.

25 THE COURT: I think it was for certain matters and

1 not designation of experts.

2 MR. LAMINACK: My understanding is --

3 THE COURT: I didn't -- I stayed discovery during
4 that time.

5 MR. LAMINACK: Yes, your Honor. You stayed all
6 discovery.

7 THE COURT: But not designation of experts. That's
8 something you would have known from the beginning, your experts.

9 MR. LAMINACK: Correct, your Honor.

10 THE COURT: So why --

11 MR. LAMINACK: We didn't designate them because my
12 understanding was that was part of the Master Discovery Order
13 and it was stayed by the Movants.

14 And so I wasn't about to do anything to violate your
15 order.

16 THE COURT: Okay. Well so when the stay was vacated
17 -- I don't agree with you about that, but let's say that you're
18 correct -- that your reading of that was correct. When the stay
19 was vacated -- Mr. Mulholland, end of the June?

20 MR. LAMINACK: June 30th.

21 MR. MULHOLLAND: June 30th.

22 THE COURT: June 30th.

23 MR. LAMINACK: Within six weeks, we listed all of
24 the experts we are going to use!

25 And I presume one of the things to be discussed

1 today is the new Scheduling Order for the Alexander case.

2 THE COURT: I don't think so.

3 MR. MULHOLLAND: Your Honor, one of the truly
4 remarkable things about these new reports is they started -- the
5 dates on them go back to January of 2005 and the first time the
6 Defendants saw them was when they -- when the Alexander
7 plaintiffs responded to our Motion for Summary Judgment on
8 August 18th, 2005, and that motion had been filed in February.
9 So there are enormous timing problems throughout this process.

10 THE COURT: I had -- and by the way, I had expert
11 discovery, which is why we had a February hearing of the
12 experts, the Dauberts and everything else. We had all those
13 were designated. The diagnosing physicians only were designated
14 per my Fact Sheet requirement. That discovery was supposed to
15 be ongoing. I never stayed those.

16 The experts were due in Alexander June the 1st, '05.
17 I never stayed Alexander's discovery. I never stayed Alexander
18 at all. And instead, even if you -- there was some misreading
19 of that, that order on the regular MDL cases was vacated end of
20 June and these experts were not designated until August the
21 12th.

22 MR. LAMINACK: Correct, your Honor.

23 THE COURT: So why were they late designated?

24 MR. LAMINACK: They weren't late, your Honor.

25 I mean, you lifted your stay June 30th. The stay

1 order makes no distinction. It doesn't carve out Alexander at
2 all. It simply states, "All the discovery proceedings." Within
3 a very reasonable time after you lifted your stay, a lot of
4 deadlines had run during your stay. And certainly within a
5 reasonable time after you lifted your stay and in light of all
6 of the rulings and pronouncements the Court had made, I think
7 less than six weeks is a very reasonable time to attempt to
8 comply and address the Court's concerns, concerning experts, all
9 that you've said and written.

10 It would be obviously derelict not to have done
11 that, and not to take into consideration everything you said and
12 all your rulings about experts, so we have been very careful in
13 what we've done with respect to experts. And I think you'll
14 find that we've been very thorough and in the Motion to Dismiss
15 and the Motion for Summary Judgment that they addressed, I hope
16 to have an opportunity to discuss that with you and why we did
17 certain things. I certainly think less than six weeks time
18 after you lifted the stay is reasonable time for designation.

19 THE COURT: Why is that? I assume you had them all
20 along?

21 MR. LAMINACK: Not all of them. We certainly had
22 some of them. Some of them we had been working with.

23 MR. MULHOLLAND: Your Honor, all but four are dated
24 before June 7, 2005 and they began receiving them January 11th,
25 2005. And I can run down the dates on -- the dates and letters

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1 that need be, but the bulk of them were done by April 2005 and
2 again, the Defendants didn't see them until August 18th.

3 MR. LAMINACK: That's correct. Discovery was
4 stayed.

5 MR. MULHOLLAND: What was not stayed, however, your
6 Honor, even if discovery were stayed, was our Motion for Summary
7 Judgment and this is only thing that they submitted in response
8 to our Motion for Summary Judgment. It's been on file since
9 February -- February 25th.

10 (Pause)

11 THE COURT: Well, I'm not sure that that's a good
12 explanation, Mr. Laminack.

13 MR. LAMINACK: What's that, your Honor?

14 (Pause)

15 THE COURT: Did you print them off?

16 THE CLERK: Yes. They are printing.

17 THE COURT: Thank you.

18 (Pause)

19 I'm waiting for -- I think the whole matter will be
20 resolved when he looks at the petitions. I'm going to dismiss
21 it for lack of jurisdiction anyway.

22 MR. LAMINACK: Dismiss the whole case for lack of
23 jurisdiction?

24 THE COURT: When you look at the petitions, I think
25 you'll realize that. You've had over a year to identify -- to

1 properly identify the Defendants with their citizenship.

2 MR. LAMINACK: Well, first of all, your Honor --

3 THE COURT: Their place of incorporation, and their
4 principal place of business, and for some reason, the Plaintiffs
5 have been unable to do that.

6 MR. LAMINACK: First of all, I disagree with that,
7 your Honor.

8 Second, there's only one party moving.

9 THE COURT: Pardon?

10 MR. LAMINACK: There's only one party -- one
11 Defendant that's moved for dismissal, based on lack of
12 jurisdiction.

13 THE COURT: I can sua sponte do this any time.

14 MR. LAMINACK: I understand that, your Honor.

15 THE COURT: At any time and you all have had more
16 than enough time. I have given you so much leeway in this case
17 for improper pleadings, to fix them. You fix them one time then
18 they go back to the improper pleading a second time. And all
19 you were supposed to do was clarify about the one Defendant and
20 instead you muddled the water with all the Defendants again.

21 Any other Motions to Dismiss?

22 MR. MULHOLLAND: Your Honor, we have additional
23 arguments about the Alexander documents, but we'll defer those
24 based on the Court's comments.

25 THE COURT: Go ahead. If you'd like to talk about

1 them, you may.

2 MR. MULHOLLAND: Well, the -- it's more of the same.
3 Of the -- and this gets nightmarish because there are
4 plaintiffs in the first petition that don't appear in the Second
5 Petition. They reappear in the Third Petition.

6 THE COURT: I know. It's a mess.

7 MR. MULHOLLAND: But suppose there are about 82 that
8 purport to have new diagnoses and I think that's right -- 60
9 percent of those are retreads. They've also got asbestosis
10 claims.

11 Now in reference to our motion that we're talking
12 about the, the Order 25 Motion, those documents have not been
13 produced, and obviously it's critical to this claim for
14 silicosis that we have their prior asbestosis claims. 33 --

15 THE COURT: Mr. Laminack, do you have those by the
16 way?

17 MR. LAMINACK: Pardon me, your Honor?

18 THE COURT: In the Alexander and Mr. Mulholland is
19 saying that -- how many -- what percentage of those?

20 MR. MULHOLLAND: Sixty of 82, 73 percent.

21 THE COURT: Sixty of 82 have also previously had
22 asbestosis claims; is that correct?

23 MR. LAMINACK: I have no idea, your Honor. I'm not
24 aware of this. What I can say is, we never, never represented
25 an asbestos claimant and then turned around and retread it as a

1 silicosis claimant. We never, ever did that.

2 THE COURT: But Mr. Mulholland is saying that
3 somebody else did.

4 MR. LAMINACK: Now we have gone to --

5 THE COURT: But that the 70-something percent of
6 these remaining Plaintiffs also have a claim for asbestosis.

7 MR. LAMINACK: Okay. We have gone to great lengths
8 to inquire of our clients whether or not they ever had an
9 asbestos claim.

10 THE COURT: Do you have the names?

11 MR. MULHOLLAND: Yes, your Honor. I have a
12 spreadsheet that lists them all out.

13 THE COURT: Let's do that. Let's just read them in.

14 MR. MULHOLLAND: And --

15 THE COURT: This is what we did at the February
16 hearing.

17 MR. LAMINACK: I understand that and when we got the
18 names at the February hearings, we wrote those clients letters.
19 We said, "Who is your lawyer? Did you have an asbestos lawyer?"

20 When we got that information, we wrote the lawyers. We said,
21 "Please provide that information. We're under Court Order to
22 turn it over."

23 In some cases we got it. In some cases we didn't
24 get it from the lawyers.

25 THE COURT: And here we are -- here we are in

1 August. Okay. Just -- you want to put it on the overhead
2 screen?

3 MR. LAMINACK: So in short, we've given them
4 everything we have.

5 MR. MULHOLLAND: Your Honor, as a suggestion and
6 I'll do obviously whatever you like, we'd be willing this
7 afternoon or tomorrow to provide him a list of the Plaintiffs
8 that have asbestos claims. The lawyers that represent them --
9 the cases they were and so forth.

10 THE COURT: Just put them on the overhead. Let me
11 see them on the Elmo.

12 What information do you have?

13 Mr. Mulholland, has the Plaintiff's Attorney in
14 Alexander given you the information from the asbestosis claims?

15 MR. MULHOLLAND: No. We have three different --

16 THE COURT: Any of them?

17 MR. MULHOLLAND: I don't -- they identified the --
18 the Court may recall what we call the "O'Quinn 331" just as
19 Plaintiffs who also had asbestos claims, but we don't have any
20 of the underlying --

21 THE COURT: The X-rays, the diagnoses?

22 MR. MULHOLLAND: Correct. We don't have that -- we
23 do not have that, your Honor.

24 MR. BARGER: What are you trying to do?

25 MR. MULHOLLAND: Focus.

1 MR. MULHOLLAND: Do that down here.

2 THE COURT: Zoom in and push focus. Zoom in all the
3 way. We'll do it. Ms. Scotch will do it. This is very
4 difficult.

5 (Laughter)

6 MR. KRUTZ: Sit down, Barger.

7 MR. BARGER: I failed again.

8 (Pause)

9 MR. MULHOLLAND: Your Honor, on the left column is
10 the name, and Column A and B is the last and first name of the
11 Plaintiff. Column C is the social security number. Over to the
12 right, beginning at Column K, L, M, and N are information based
13 on either our firm's internal records or the JM Trust, which we
14 were able to determine, the case the Plaintiffs were in, their
15 lawyers historically. You know, this is the information that we
16 have about the asbestos claims.

17 THE COURT: Mr. Laminack, these are your clients.
18 This information you had in February and here we are in August.

19 MR. LAMINACK: Correct. It's information I provided
20 them --

21 THE COURT: And do you have the X-rays from the
22 asbestosis claims? Do you have the medical reports from the
23 asbestosis claims?

24 These are your clients. They were supposed to have
25 identified on their original Fact Sheet, all of these diagnoses,

1 but apparently failed to do so.

2 Now what you have here is 70-some-odd percent of
3 your clients that have had both a diagnosis, according to you,
4 of silicosis and asbestosis, which when I heard all the experts
5 in February, not a single expert had ever seen a combination of
6 those two. Only Plaintiff's lawyers have seen them.

7 Not a single physician that testified here had ever
8 seen -- they didn't rule out that it wasn't possible, but none
9 of them had ever seen a case of asbestosis and silicosis
10 combined.

11 And so the sanctions that were given originally for
12 this may continue. Those documents should be provided by your
13 clients. I assume that your experts that you've identified are
14 going to explain why some 70 percent of your clients have both
15 silicosis and asbestosis and how that could possibly have
16 occurred, and I just need to give you fair warning about this
17 because this stretches credibility.

18 MR. LAMINACK: Your Honor, I understand and I don't
19 like it, either. I want the Court to know that. I have
20 listened very carefully to everything you've said.

21 THE COURT: I appreciate that.

22 MR. LAMINACK: And I've heard your concerns. And --

23 THE COURT: But those were February concerns and --

24 MR. LAMINACK: I totally understand. And you bet my
25 experts are going to explain that. I think the explanation on a

1 lot of the cases is the asbestosis diagnosis is wrong.

2 THE COURT: Well, that would be a shame, wouldn't
3 it, that your clients made fraudulent claims in asbestosis and
4 now those same people who made fraudulent claims are trying to
5 make another pneumoconiosis claim here. It -- that impacts
6 their credulity tremendously.

7 I wonder, also, for each of the Plaintiff's lawyers
8 that have these cases, if they have informed their clients once
9 you acquired this diagnosis for your clients that they now have
10 to forever have the diagnosis of a terminal disease, that
11 they're obligated to tell their life insurance carriers. If
12 they acquire new life insurance, if they change health insurance
13 providers, that they have this disease.

14 Do you think that they know this, Mr. Laminack?

15 MR. LAMINACK: Your Honor, that's a very good point.
16 I agree totally with what you're saying.

17 THE COURT: Would you mind standing in front of a
18 microphone? I beg your pardon, Mr. Laminack. There's one on
19 each of the tables -- actually most of the tables, and there's
20 some overhead mikes that don't work because I had to disconnect
21 them to do these, but...

22 MR. LAMINACK: I understand and I agree with what
23 the Court has said. Obviously I don't want to go into what I
24 talked to my clients about --

25 THE COURT: I understand.

1 MR. LAMINACK: -- other than to say we have been
2 very candid with our clients about these issues and the
3 repercussions.

4 And your Honor, I've got enough to do. I don't want
5 to represent people that don't have legitimate cases. I don't
6 want to do that. That's not my purpose in being here. All I
7 know is at this point 87 of these Alexander plaintiffs have
8 good, solid Daubert-proof diagnoses of silicosis. They've got
9 it.

10 THE COURT: And 70-some-odd percent of those also
11 had apparently solid Daubert-proof asbestosis diagnoses.

12 Did you print off the document for him?

13 MR. LAMINACK: I doubt that.

14 THE COURT: Pardon?

15 MR. LAMINACK: I doubt that's true.

16 THE COURT: About the asbestosis?

17 MR. LAMINACK: Yes.

18 THE COURT: And Mr. Laminack, you can speak on
19 behalf of your clients about that?

20 MR. LAMINACK: As I say, your Honor, I doubt that. I
21 doubt the numbers, and I doubt the diagnosis.

22 THE COURT: You doubt that they had claims or you
23 doubt that they actually had asbestosis?

24 MR. LAMINACK: Both.

25 THE COURT: Okay. Here are your -- we've printed

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1 off the three petitions that we're talking about, Mr. Laminack.
2 And one more. There's one more coming, sorry. You can take
3 that, too.

4 MR. LAMINACK: And I'm not -- I'm not taking a
5 cavalier attitude, your Honor, but that's not a problem.

6 THE COURT: Well, I don't hear that.

7 MR. LAMINACK: I know that's a problem.

8 THE COURT: And I appreciate that, Mr. Laminack, but
9 I --

10 MR. LAMINACK: And you can bet I don't want to be
11 here.

12 THE COURT: This is your Court, Mr. Laminack.

13 MR. LAMINACK: In this type of setting.

14 THE COURT: You're welcome here any time and your
15 clients.

16 MR. LAMINACK: Well, I hope this is my courtroom,
17 too, just like it is for the Defendants.

18 THE COURT: It is your courtroom, Mr. Laminack.

19 MR. LAMINACK: And I hope it belongs to my clients,
20 too.

21 THE COURT: It's not my courtroom. It belongs to
22 all of you.

23 Here's the third petition. And if you read them in
24 order, you'll see the problems.

25 MR. LAMINACK: I will do that right now, your Honor.

1 THE COURT: Thank you, sir.

2 So I will excuse you and we'll go back then to
3 McManus. I see the attorney is back -- is in.

4 If you could change gears, Mr. Mulholland?

5 MR. CANSLER: They're working on it right now, your
6 Honor. They're supposed to call me back in ten minutes. I just
7 didn't want to miss what was going on in here.

8 THE COURT: All right. I assume you don't have a
9 cell phone on.

10 MR. CANSLER: Not in this big room, no, ma'am.

11 THE COURT: Thank you very much.

12 MR. MULHOLLAND: Your Honor, both with respect to
13 the McManus case and with respect to the information that's on
14 this chart as to Alexander, these matches to prior asbestos
15 claims were made by social security number and not name, so I'm
16 fairly confident, but not positive that it is.

17 THE COURT: Let's not talk about Alexander while Mr.
18 O'Quinn -- I mean, Mr. Laminack is not here.

19 (Pause)

20 Does that conclude then your presentation under
21 Roman Numeral II Discovery Motions to Dismiss?

22 MR. MULHOLLAND: Except for some additional
23 information about Alexander.

24 THE COURT: Okay. We'll then I'll come back to
25 that.

1 Now B, Motion to Compel Screening Companies'
2 Compliance with Order Number 25.

3 MR. ARGENTO: Good morning, your Honor.

4 My name is John Argento and I filed this motion on
5 behalf of my clients and certain other Defendants. Your Honor
6 issued Order Number 25, which I'm sure you're familiar with,
7 that required the disclosure and filing with the depository of
8 certain information dealing with names of the screening
9 companies that screened each of the Plaintiffs, medical records
10 that dealt with any Plaintiffs that were in this MDL, other
11 medical records and information from either other treating
12 physicians or diagnosing doctors.

13 Your Honor, what we did before we presented this and
14 prepared this motion, we went to the depository and got an index
15 of everything that was filed by either a party or on behalf of a
16 Plaintiff by a law firm that represented them in this
17 litigation. What we were able to determine, your Honor, is that
18 there are four firms that filed absolutely nothing in response
19 to Order Number 25 that we can determine.

20 Now there is one possibility, your Honor, and it
21 does get confusing sometimes. Some of the firms work together
22 on cases or they're affiliated with respect to certain clients,
23 so if one firm filed something that satisfied the requirement
24 for another law firm, I'm not here and able to determine that. I
25 need to hear from the Plaintiffs' firms about that and you need

1 to hear about that.

2 But your Honor those four firms are Brent Coon and
3 Associates --

4 THE COURT: Are who?

5 MR. ARGENTO: Brent Coon and Associates, your Honor.
6 Ingraham and Associates, Mr. Hooper's firm, and the Shannon Law
7 Firm, which I think may have been corrected or rendered moot
8 today because I think they only have the Cole case and that case
9 was dismissed, if I'm not --

10 THE COURT: Okay. So that's -- we're talking three
11 law firms?

12 MR. ARGENTO: Yes, your Honor. And then there are
13 other -- there are other law firms, your Honor, that we were
14 able to determine that they are in partial compliance, but
15 there's great amounts of information that are missing that
16 caused them to not be in compliance with Order Number 25.

17 And I can get into the details by law firm, if you'd
18 like me to, but perhaps as a suggestion, we could talk about the
19 three law firms first that as far as our research has indicated
20 have not filed anything in compliance with Order Number 25.

21 THE COURT: Is the Brent Law Firm here? Brent Coon
22 and Associates?

23 MR. CANSLER: That's me again, your Honor. That's
24 my firm.

25 THE COURT: And can you tell me, do you have any

1 documents in response to Order Number 25?

2 The problem with that is that I know that I said all
3 orders apply to all new cases, but I had a date of February
4 25th, 2005 that everybody had to file. I don't think their law
5 firm was even -- had a case here.

6 MR. ARGENTO: That's possible, your Honor. That's
7 possible in light of --

8 THE COURT: So these, I think, that all they've got
9 are some new cases?

10 MR. CANSLER: We're one of the new cases, your
11 Honor, and I've got a letter here when we were filing and trying
12 to file with the Court. We were having difficulty because we
13 could not get a style. I talked to Ms. Scotch here, your Honor,
14 and of course, your clerk.

15 Where we were having difficulty actually filing it
16 and did not want to be out of compliance with any of the orders.

17 THE COURT: Okay. Well, you don't make any
18 agreements with my case manager. You're agreements either are
19 in court or made with other parties when you can file them, but
20 sending a letter to Ms. Scotch saying this is to confirm my
21 understanding of your conversations with my paralegal, doesn't
22 do a thing.

23 MR. CANSLER: Yes, ma'am. Well, I -- yes, ma'am.

24 THE COURT: And she's not obligated to respond at
25 your bottom line that says, "If this is not correct, please

1 notify either myself or my staff." That isn't how we do
2 business here. It's not sent out to all the other parties.

3 MR. CANSLER: I had spoke to --

4 THE COURT: Would you give that back to him, please?
5 What did you tell him about that?

6 MR. CANSLER: -- a member of Forman Perry Watkins
7 Reese and Tardy about this and told them that we were having
8 some problems and that was the extensive instructions.

9 THE COURT: What problems were you having?

10 MR. CANSLER: I couldn't -- they would not give me a
11 cause number to file the discovery into the repository, as I
12 understood it. I could have filed it, but they didn't -- it
13 didn't -- I didn't have a number.

14 THE COURT: Who was supposed to give you that? What
15 was your understanding about that?

16 MR. CANSLER: My understand was, and if I could read
17 my letter, I think it --

18 THE COURT: No. I don't care what your letter to my
19 case manager.

20 What was your understanding about how you were
21 supposed to file? Did you call the Liaison Plaintiff's Counsel?

22 MR. CANSLER: Mr. Watts? Yes, ma'am.

23 THE COURT: And what did he tell you?

24 MR. CANSLER: I don't recall him ever getting back
25 in touch with me, to be honest with you.

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1 MR. ARGENTO: Your Honor, to follow up on your point
2 about when this firm may have been involved --

3 THE COURT: Your cause number -- what case are you
4 talking to -- talking about for cause number, McManus?

5 MR. CANSLER: Yes, ma'am.

6 MR. ARGENTO: Your Honor, there were Fact Sheets
7 filed in that case as far back as May 5th.

8 THE COURT: I have a Southern District Cause Number
9 205-121 and you filed documents in that cause number.

10 MR. CANSLER: And my understanding was we were
11 supposed to stop.

12 Your Honor, let me call Ms. Coleman once again and
13 find out for --

14 THE COURT: What are you doing here if you don't
15 know anything about this? This is very unfortunate.

16 MR. CANSLER: I was just trying to help out a lawyer
17 colleague of mine --

18 THE COURT: I understand that, but --

19 MR. CANSLER: -- who cannot fly because of her --

20 THE COURT: -- you need to -- do you have a Federal
21 license?

22 MR. CANSLER: Yes, ma'am.

23 THE COURT: Have you read the Federal Rules on what
24 you're supposed to do to appear for lead counsel and what your
25 level of -- do you have the authority to bind your client today?

1 MR. CANSLER: Yes, ma'am.

2 THE COURT: To what?

3 MR. CANSLER: It just depends on what you -- I need
4 to. I would have full authority, I would say.

5 THE COURT: You're supposed to be familiar with the
6 case and you're, as you said, clearly not so why don't you go
7 back and check with your firm and see what it is you can do?

8 MR. CANSLER: And what information specifically does
9 the Court request or is asking me --

10 THE COURT: I wanted to know why you've not filed
11 the documents in response to Order Number 25. It can't be
12 because you didn't have a cause number, because you've been
13 filing documents in this cause number in McManus, 2-05-121,
14 since the case was transferred.

15 MR. CANSLER: In my last conversation with Ms.
16 Coleman, her representations to me, your Honor, was that
17 everything that we had in our possession, custody, and control
18 had been turned over to the Court. If there's things out
19 there --

20 THE COURT: I don't take discovery. It goes into a
21 document depository.

22 MR. CANSLER: And that's what I --

23 THE COURT: Can you find out what documents you have
24 filed in response to Order Number 25?

25 MR. CANSLER: Yes, ma'am.

1 THE COURT: Do you have X-rays of your clients?

2 MR. CANSLER: Those have been filed, it's my
3 understanding.

4 MR. ARGENTO: Your Honor, that's not what the
5 deposit log from the depository says. The depository log
6 indicates that on May 5th, they filed some Fact Sheets and
7 that's the only filing they have for his law firm. And I got
8 this from --

9 THE COURT: Find out where the X-rays are, where the
10 expert reports are, where the diagnosing physician reports are.

11 MR. CANSLER: Yes, ma'am.

12 THE COURT: Did any of these have asbestosis claims?

13 MR. ARGENTO: Your Honor, these are part of the
14 McManus, so yes. We've already had that discussion this
15 morning.

16 THE COURT: Oh, McManus, they've had asbestosis
17 claims also?

18 MR. ARGENTO: I believe so, your Honor.

19 THE COURT: You need to find out where those
20 documents are that have to do with the asbestosis claims, and
21 report back.

22 MR. CANSLER: Yes, ma'am. Sorry for the
23 inconvenience.

24 THE COURT: Thank you, sir.

25 MR. ARGENTO: Your Honor, the next firm is the

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1 Ingraham firm and according to the deposit log from the
2 depository --

3 THE COURT: Is anyone here from Ingraham?

4 MR. ARGENTO: Cheri is not sure if they have any
5 active cases.

6 THE COURT: Cases left?

7 MR. ARGENTO: And your Honor, when we sent out the
8 motion, we sent it out a week or ten days in the advance with
9 the hope that some of these firms would call us. No one called
10 us from the Ingraham firm.

11 THE COURT: Okay.

12 MR. ARGENTO: So if they do not have any active
13 cases, we'll withdraw them.

14 THE COURT: And what have you got, Mr. Hooper?

15 MR. HOOPER: Your Honor, my reading of Order 25 was
16 about the screening companies only. As I've advised the Court
17 several times and the defendants, we didn't use screening
18 companies. We had a discussion with the Court during the
19 February hearing about on the day the order was entered that we
20 had used a company when we couldn't use land-based X-rays --
21 like a facility that had land-based X-rays that we used a
22 company called "Inner Visions," to do the X-rays. And during
23 the discussion with the Court, it's my understanding that we had
24 to produce those records. We have produced Inner Visions
25 records to the Defendant.

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1 My reading of 25 was about the screening companies
2 and we didn't use screening companies. If the Court would like
3 for me to file an Affidavit that Inner Visions has complied with
4 producing all of their records, I'll be happy to do that or if
5 the Court needs something from Inner Visions, we'd be happy to
6 do that.

7 THE COURT: Okay. That's not what I ordered in
8 Order 25, that you should file on the date that I specified, "A
9 list of all screening companies, medical testing companies, and
10 other entities or persons who supplied any Plaintiff's B-Read
11 and/or diagnosis of silica-related diseases to any Plaintiff's
12 Counsel in this MDL."

13 And of course, the list should include the name,
14 addresses, and phone number of each screening company, but did
15 not apply just to screening companies.

16 Now these are third-party people. If you don't --
17 if you tell me you didn't check with them, but if you don't
18 have any control over the, that's another thing all together.
19 But if these are going to be produced in any way to substantiate
20 any of these claims are --

21 MR. HOOPER: Your Honor, to the extent that it -- if
22 we're talking about doctors like Dr. Ballard, who did the B-
23 Reads, or Dr. Levy, who did the medical report. If it
24 encompasses those, Dr. Ballard and Dr. Levy have produced all of
25 their records, also. My understanding is Dr. Levy didn't

1 produce a handful, and I don't know the number of files of
2 people that were incomplete that he had not diagnosed. So if
3 we're talking about those doctors, which I didn't read it, and I
4 asked the Court about the scope of it.

5 THE COURT: Wait a minute. What are you missing
6 that you want from Mr. Hooper's clients?

7 MR. ARGENTO: Well, your Honor, we're just asking
8 for what you ordered and that any physician that made a
9 diagnosis should supply through Plaintiff's Counsel an affidavit
10 saying they've supplied everything and we don't have affidavits
11 from anyone who diagnosed any of Mr. Hooper's clients.

12 MR. HOOPER: If that's the scope of the order, I'm
13 sorry because I -- I'm sorry. We'll get that affidavit.

14 THE COURT: All right. How long do you need to do
15 that?

16 MR. HOOPER: May I have two weeks?

17 THE COURT: That's fine. Thank you.

18 MR. ARGENTO: Your Honor, that takes care of that
19 group of firms and then there are other firms, your Honor, the
20 first one being Campbell Cherry where our investigation has
21 disclosed that they have provided no list of screening companies
22 or other medical testing companies as was required, and while
23 they did file an affidavit from M&N, they have not filed
24 affidavits from Drs. Martindale, Hilbun, Cooper, Ray Herron, and
25 perhaps other doctors.

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1 THE COURT: I think their testimony would suffice.

2 MR. ARGENTO: Good. But we would like --

3 THE COURT: That was all under oath.

4 MR. ARGENTO: Your Honor, we weren't sure exactly
5 how much detail they got into, whether they were asked about all
6 their records and whether or not they still retained anything,
7 so that's the only reason we brought it up.

8 THE COURT: I think that all those people did say
9 they didn't have any records. They didn't have any records at
10 all.

11 MR. BARGER: Yes.

12 THE COURT: If I recall correctly.

13 MR. BARGER: That's a correct assessment.

14 MR. ARGENTO: Your Honor, we'd still like a list of
15 all the screening companies and other medical providers, because
16 again there's no way for us to know if we're missing anybody
17 unless we have that list and it's provided.

18 THE COURT: All right. Campbell Cherry?

19 MS. SNAPKA: Your Honor, I believe those cases were
20 remanded. I don't believe we have any more.

21 THE COURT: I don't think I have any more Campbell
22 Cherry cases in front of me.

23 MS. SNAPKA: Yes. I believe that's correct, your
24 Honor.

25 MR. ARGENTO: Your Honor, the other firm would be

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1 the Alwyn Luckey (phonetic) firm. Again, no list of screening
2 companies.

3 THE COURT: The what company?

4 MR. ARGENTO: Alwyn Luckey, that law firm.

5 THE COURT: Anyone here from that company -- from
6 that firm?

7 MR. MULLINS: I'm here for the law settlement. Our
8 people were here live and while were here they produced
9 everything we had. I don't know what they suggest we --

10 THE COURT: Why not just make a -- if you make a
11 representation that that's all there is, there isn't any more.

12 MR. MULLINS: That's all there is, and I think these
13 were referenced again were May cases, which this Court -- we've
14 given everything we have.

15 THE COURT: Okay.

16 MR. ARGENTO: Your Honor, there was a letter from
17 Mr. Mullins indicating that he had attempted to contact Quality
18 Testing Services, that they were out of business, that some of
19 their records had been destroyed in a hurricane and that the
20 owner, Mr. Childers, had been away on vacation for a week and
21 that he was going to continue to try to speak with him and get
22 compliance with the Court's order. That was a letter dated in
23 February.

24 THE COURT: I don't have any of his cases.

25 Do I have any of his cases? Is he part of the 17?

1 MR. MULLINS: No, your Honor.

2 MR. ARGENTO: I think they're remanded.

3 THE COURT: Do you answer anyway? Do you know
4 anything about that company?

5 MR. MULLINS: It's my understanding those records
6 were destroyed in Hurricane Ida. I think he was actually might
7 have had one or two of the actual cases that we represented. We
8 had never been successful in getting those back. He's an
9 independent party. He's out of business. He does something
10 else now. I've talked to his wife multiple times and we've
11 tried to get them to us. She said she thought they were all
12 destroyed. They've never been given to us.

13 MR. ARGENTO: Your Honor, the last one is the Porter
14 and Maluth (phonetic) Firm and the Foxworth and Casano
15 (phonetic), who I believe filed cases jointly. There were 19
16 providers that we were able to determine from review of the
17 records that we did not have affidavits from, none of whom were
18 experts that testified here at your Daubert hearing.

19 And your Honor, interestingly enough, ten out of the
20 19 called us in response to the motion and all ten of them told
21 us that they had never heard of Order Number 25. They had never
22 been contacted by anybody from the law firm to comply and that
23 in every instance we referred them to Attorney Porter and said,
24 "You need to talk with him."

25 MS. SNAPKA: Your Honor, I believe all those cases